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INTERESTING ACCOUNT

TORONTO PUBLIC LIBRARIES REFERENCE
MAY - 1956

OF THE

ORGANIZATION AND MODE OF OPERATIONS OF THE CELEBRATED HORDE OF ROBBERS

KNOWN AS THE

MARKHAM GANG;

WITH THE

TRIALS OF THE MOST NOTED OF THE CRIMINALS, AND A LIST OF CONVICTIONS AND SENTENCES.

TORONTO, CANADA, 1846.

From the British Colonist.

THE MARKHAM GANG,

So denominated, because their existence was first discovered in that Township, but whose ramifications are now ascertained to extend through the entire of the Province, from the Townships of Lower Canada in the east, to the State of Michigan in the west, with branches in the States of Vermont, NewYork, Illinois and Iowa, have sustained "a heavy blow and great discouragement" at the recent Assizes for the Home District, at which some twenty of the gang have been tried and most of them convicted, and sentenced to various degrees of punishment for their crimes, as will be seen by our report of the trials and convictions at those Assizes.

Having paid close attention to the proceedings before the Magistrates, upon the examinations of the several prisoners, as well as to the subsequent trials of the criminals before the Court of Assize; and having received much additional information on the subject from the gentleman who has been mainly instrumental in discovering and bringing to justice, so many of this formidable association of rogues, we are enabled to present our readers with some account of the history, organization and *modus operandi* of the gang, which, we are sure, will be alike interesting and useful to the public.

The long impunity which this association enjoyed gradually magnified their power, by increasing alike their numbers and their daring, until they became a terror to the communities in which they resided: the whole country was held in a state of intimidation. Some of the magistrates, and constables and jurors, were alike afraid to do their duty: and even the victims of their robberies were deterred from taking proceedings against the robbers, from the fear that the greater evils of *fire* or *murder* would be inflicted upon them by this desperate gang. During the examinations, many facts such as the following were disclosed:—A country magistrate refused to grant a warrant against B—— and J——, (two of the most formidable of the gang,) for breaking into and stealing goods from a shop, on the ground that he was afraid to do so! A constable of Markham, into whose hands a warrant was placed for the apprehension of one of the gang (now in the Penitentiary,) immediately sent private information to the culprit that he had the warrant, and would not execute it for four or five days, evidently for the purpose of giving the man ample time to escape; the rogue, however, more courageous than this rural official, refused to run! and sent word to the constable that he had no fear of being convicted. He was subsequently brought before the neighbouring magistrates, the burglary was proved, the prisoner's identity sworn to, and the magistrates discharged him on bail! an accomplice in the burglary* being one of his bail!! The culprit was again advised to run, but again sturdily refused, declaring his belief that the jury would not convict him, and even if they did, and if he

* This fact was not known by the magistrates at the time but it was known by them that this man was one of the gang

should be sent to the penitentiary, he would soon "get out again on petition!!" Contrary to his expectations, however, the prisoner *was* convicted, is now in the Penitentiary and he has not yet "got out on petition!" These, and other similar facts, sufficiently demonstrate the influence of intimidation upon some of the officers of justice in the country: while it is well known, that several of the gang, who were convicted at the late Assizes, openly boasted, that had the jury been from their part of the country, they durst not have convicted them. Fortunately, the jurors at these assizes were all from this city, and were not under the influence of such intimidation.

With regard to the origin and history of the gang, the facts recently disclosed render it obvious that the present association grew out of, or rather is but a continuation for other purposes, of the associations which were originally organised for purposes of revolt, previous to the late rebellion. The principal families implicated in the present gang were all also implicated in the late rebellion. Many individuals not so implicated have undoubtedly been induced to join them, but the nucleus of this association of thieves was undoubtedly formed from the refuse of those of the rebels. The mode of communication between distant individuals and branches of the gang, viz., by special messengers, rather than by written correspondence, being the same in both cases. Written correspondence being rarely resorted to in either case, and then only between special individuals, and in language so dark and caballistic that none but the initiated could comprehend its meaning.

One of the most remarkable features of this association is, that the whole of its members are either Americans or native Canadians of American parentage; not one old countryman, not one native Englishman, Scotchman or Irishman, being found in the gang, although it comprises some hundreds of persons.

Another singularity of this association is, that the parties to it are all apparently in fair circumstances, and in a condition of life which divests them of the plea of necessity for their crimes. They are all persons (saving phrenological developements) of good appearance, and as well dressed as the generality of the better class of our farming population. Some of them are the owners of farms; many of them are the sons of freeholders, strong, able-bodied, well-dressed young men; some are tavern-keepers; some are owners or lessees of saw mills; and all of them are in a condition of life to be able to earn an honest livelihood. There has not been one instance, so far as has yet been developed, in which the party could offer the plea of poverty or necessity for the commission of the crimes charged against him; while some of them, since their conviction, have confessed that they have "never had a day's good luck" since they joined the gang; that previously to their doing so, they were well off and well respected, but that since, "every thing has gone wrong" with them; that their own rightful property has gone to wreck, while that acquired by dishonest means was always quickly dissipated; and that they are now, even in a pecuniary point of view, in a much worse condition than they would have been had they pursued an honest career; while their characters and their liberties are now sacrificed for their crimes.

The systematic caution, skill and cunning, with which they conducted their nefarious operations, fully account for the long impunity which they enjoyed, and, indeed, rendered detection almost impossible; except in cases where the parties were recognised in the act (as in some cases of burglary) and subsequently identified: and, but for the disclosures and evidence of some of the accomplices of the gang, very few of them could ever have been discovered or brought to justice. Fortunately, several of the association have made such disclosures, and others it is understood are about to follow their example. Many of the gang have in consequence already been convicted, and many more will undoubtedly shortly share the same fate. Indeed there is now reason to believe that the whole of this iniquitous association will soon be broken up, root and branch, so far at least as relates to this province.

From what we have learned of the gang, we should be disposed to divide them into two classes: the cavalry! and the infantry! The former, who are generally mounted on the best horses in the country, figure only in the higher branches of roguery; such as burglary, horse stealing, and in the wholesale dissemination of "Boodle!" Boodle being the flash term of the gang for counterfeit money! To the infantry is delegated the lower or democratic order of thievery! Such as pilfering from hen roosts; stealing harness, buffalo skins, blankets, &c., from stables and sheds; wheat and other grain, from barns and granaries; clothing, guns and other articles, which are often left exposed in the porches, verandahs, &c., of country houses; linen, &c., left out at night to bleach; and indeed any and every other article upon which their hands can easily be laid. To aid them in these nightly marauding excursions, they generally obtain a waggon and horses from some of their associates, to bring away the plunder. Some of this infantry division are occasionally entrusted with the retailing of boodle; which they pass off upon the farmers, tavern keepers, &c., of the back townships. This they manage with great dexterity and caution. They never carry more than one bad note about them at a time; having at the same time several good notes. If the note, when offered, should happen to be detected or suspected, the fellow who offers it, with expressions of surprise, regret, doubt, &c., immediately offers a good note, and all is right. Or, if the parties should proceed so far as to have the fellow searched, all the money about him is good except this one note, and he is usually discharged. But if the bad note, when offered, be taken without suspicion, which it generally is (among the class of persons to whom such notes are usually offered), the fellow gets his change, supplies the place of the note which he has just passed with another from the boodle bank, and repeats the experiment some where else!

There is one precautionary measure of the gang which is never departed from,—*the thieves never take the property which they steal home to their own houses.* Hence, search warrants, which have often been immediately issued against the premises of

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the right persons, have always failed. If the stolen articles are bulky, and not easily removable to a distance, they are always taken to a hiding-place previously prepared, generally in the woods, where they are kept "until the storm blows over," when they are brought out and divided among the thieves and disposed of. If the articles be easy of transmission, they are generally carried at once to the house of some distant member of the gang, by whom they are disposed of; in which case, by the bye, upon the usual principle of "honour among thieves," the thief generally receives, in the end, but a very small portion of the value of his labours. Articles of considerable value, and easily removable, such as horses, watches, bank notes, which it is feared may be identified, &c., are often taken to Lower Canada, to the townships of Shefford and Dunham, where there is a wholesale establishment for issuing counterfeit money of all sorts, and for receiving stolen goods, and where the stolen articles are disposed of in exchange for *boodle*, at the rate of $100 worth of boodle for *ten* dollars worth of valuable property, or for *five* dollars of Bankable paper. This boodle is brought back and disposed of at an advance of one or two hundred per cent. to the small fry of the gang, by whom it is put into circulation about the country. The boodle, or counterfeit paper, which is thus put into circulation, is of different descriptions; but a large proportion of it purports to be of the *Bank of Kingston* (Hudson River,) "New York Safety Fund" in small letters being engraved thereon. A great number of these notes, of the denomination of $5, are now in the hands of farmers and others of this district, by whom they were taken as notes of our Kingston Bank. It is scarcely necessary to add, that these notes are all forgeries upon the Bank from which they purport to issue.

The "operation" of horse-stealing is skillfully performed, and is always done "in duplicate." The horses to be stolen, and the places where they are to be found, being previously well known either to the thieves themselves, or to other members of the gang who have given them the information, the two thieves start simultaneously in opposite directions in pursuit of their prey; one, perhaps, to the States, and one to some distant part of this province. Each obtains possession of his horse, and they both proceed to meet each other, with all possible dispatch, at some intermediate point, where they exchange the stolen horses, and each returns to his own neighbourhood on an unknown horse! A very curious circumstance of this kind was disclosed during the recent examinations. Two of the gang (whose names we will not mention, as one of them is to be tried at the next assizes for this very offence, but whom we will designate as A. and J.,) agreed to steal two horses, which were previously known to them; one in the Newcastle District, and one in the western part of the province. A. proceeded to the latter point, and J. to the former. Each obtained his horse; A. a fine grey, and J. a fine black horse. They then proceeded, with all possible expedition, through the back concessions (these gentry never travel on the main road on business of this kind,) to a place of meeting near Brantford, where they exchanged horses, A. returning towards the west on the black horse, and J. returning on the grey horse to the very neighbourhood where he had stolen the black horse. J. having disposed of the grey horse, and having learned that A. had sold the black horse to a farmer beyond Brantford, proceeded to the spot, claimed the black horse as his property, which he said had been stolen from him by A., and threatened to take out a warrant against the farmer. The poor farmer, somewhat frightened, offered to give up the horse if J. would "prove to it!" J. accordingly made affidavit that the horse was his property, and had been stolen from him by a person answering the description of A., upon which the poor farmer gave up the horse to J., who rode it off to the westward, and sold it again in Michigan!

There is one plan of operations adopted by this gang, which is somewhat more scientific than any to which we have yet alluded,—that is, the employment of *avant couriers*, who go before, to obtain information. These gentry consist of tailors, who go about to farm houses to work at their trade, for a certain sum per day, and their board and lodging; of pedlars, who visit farm-houses, under pretext of selling small articles of finery to women and children; and, in one instance, of a rascal who pretends to have been a Methodist class-leader, and who professes to have "the gift of prayer" and "psalmody!" which he dispenses liberally, in exchange for provender and lodging. These rascals respectively avail themselves of the opportunities which these visits afford them, to ascertain who has money, where it is kept, and at what point of the premises an entry may be most effectually made, for the purpose of robbing them. This information is conveyed to the "operatives" of the gang, who soon afterwards proceed to enter and rob the premises most scientifically—rewarding the informant with part of the booty. Some of these villains are known to us, and we state the facts, in order that the honest farmers of the country may hereafter be on their guard against admitting such wandering knaves either into their confidence or their premises.

There is but one other matter concerning this gang which we propose to advert to at this time; and that is, their obligations to each other. It does not appear that any oath is now or ever has been administered in the association. But on the first introduction of a novice to the leaders or "old hands" of the gang, he is required to pledge himself that he will adhere to their rules, and never to betray their secrets on pain of certain death. In the event of any one of the gang being arrested the other members are found to do all they can for him: to procure him bail, to give evidence for him at his trial, and to "prove him clear" (as they term it) by swearing to an alibi. These are the only obligations which we have heard of, and these are generally understood and adhered to among the "MARKHAM GANG."

The discovery and bringing to justice of so many of the "Markham Gang," must have a most salutary effect; and while society has been so far free from the dangerous proceedings of this outrageous body, we must not omit to state thus publicly the debt of gratitude which the country owes for the

very efficient services rendered by the gentleman who has been mainly instrumental in discovering the criminals, and bringing them to justice. We allude to George Gurnett, Esq., one of the aldermen of the city of Toronto, and Clerk of the Peace for the Home District. The exertions of Mr. Gurnett, in pursuit of the gang, have been most unwearied, and the success which has attended them is satisfactorily shewn by the fruits of the late assizes. If ever the performance of public duty in this province deserved its reward, the services rendered the country on this occasion peculiarly merit it; and we may express the hope that the government and people of Canada will adopt some substantial means of testifying to Mr. Gurnett their high appreciation of his valuable services in this important matter. The gang, which has been broken up, was of the most dangerous character to the life and property of the entire community; and having saved the inhabitants of the province from the future depredations of such an association, is no slight service; more particularly when there was so much personal danger attached to the mere attempt on the part of any magistrate to apprehend and bring to justice any of those known to belong to this notorious gang. This danger, Mr. Gurnett possessed the courage to face, and many of the parties have been punished according to their deserts.

The following is a list of the persons belonging to what is called the "Markham Gang," who were convicted and sentenced at the late Assizes: with their places of residence, crimes and sentences :—

1. Robert Burr, Markham, Burglary, and attempt to murder—Death.
2. Hiram Stoughtenboro', James Stoughtenboro', Nathan Case, Reach, accomplices in ditto—Death recorded.
5. Oliver Badgero, Pickering, Larceny, *Penitentiary*, 7 *years*.
6. William Vanzant, Uxbridge, Larceny, 3 convictions, *Penitentiary*, 7 *years*.
7. Matthew Udell, Markham, Forgery, *Penitentiary*, 5 *years*.
8. James Green, Markham, Larceny, 4 convictions, 5 *years Penitentiary*.
9. David Morden, Uxbridge, Larceny, *Penitentiary*, 5 *years*.
10. Elmore Crandell, Reach, Larceny, *Penitentiary*, 5 *years*.
11. George Crandell, Reach, Larceny, *Penitentiary*, 5 *years*.
12. David Badgero, Markham, Larceny, *Penitentiary*, 3 *years*.
13. Robert Hubbard, Whitby, Larceny, *Penitentiary*, 3 *years*.
14. John Smith, Markham, Larceny, *Imprisoned* 1 *year*.
15. Jacob Temple, Reach, Larceny, *Imprisoned* 8 *months*.

HOME DISTRICT ASSIZES.

Before his Honour the CHIEF JUSTICE.

Matthew Udell, of the township of Markham, labourer, charged with forging and uttering a counterfeit note for £15, purporting to be the promissory note of Eli Gowan, was found "*guilty*."

Daniel Spencer, of Pickering, charged with stealing a cooking stove, and who had pleaded "not guilty," withdrew his plea, and the plea of "*guilty*" was recorded.

Oliver Badgero and *David Badgero*, charged with receiving and concealing the stove stolen by Spencer, were each found "*guilty*."

David Morden, of the township of Pickering, was charged with stealing five bags of corn from one John Hale.

John Hale deposed to the corn having been stolen.

Caspar Stotts (Queen's evidence) stated that Morden came to his place, and said, "Let's go and get a load of wheat." White (who was present) said, "Where?" He replied, "Down at John Hale's." They went and broke open the door, and took the oats. I remained at home.—The bags they used, were some of them White's, some were mine. White left in mistake, two bags filled up. I got the bags emptied the Sunday following.

Cross-examined by Mr. Duggan.—There are other charges; one about a horse and harness. He bought a set of Lorenzo White. I never swore he stole these harness, but that he had received them, knowing them to be stolen property.

W. Hardwick.—When I arrested the prisoner, he asked if he told me the truth, did I think 'twould clear him? I told him I thought it would. I found the bags; they were placed one in the other, and buried. The outer one was quite rotten.

Mr. Duggan declined to address the jury. The jury after a brief consultation, gave a verdict of "*guilty*."

Oliver Badgero and *William Vanzant* were then placed at the bar, charged with stealing 150 yards of cloth, the property of John Nicewinder. Mr. Hagarty appeared for Vanzant.

The prosecutor deposed to having lost from his fulling mill, this quantity, in January of last year. It was in rolls, and were greys, browns, and plaids. The robbery took place while he was at a sale, three or four miles off. He noticed on his return, the track of another sleigh on the side line.

Cross-examined.—Vanzant raised wool. I fulled cloth for him every year. The robbery was committed while I was at the auction. Saw Vanzant's family there. Don't know the time they left. I met a sleigh on my return. I think the parties in it committed the robbery. Vanzant lives a mile from me. (By a juror)—I have no private mark. Re-examined.—I did not see who was in the sleigh, as they turned right out, and gave us all the road.

ASSIZES.

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Caspar Stolts.—About three months after the robbery, Badgero told me that Vanzant and his wife had parted, and that she had told all about Nicewinder's cloth. While travelling in a sleigh with White, Vanzant got into the cutter. Conversation turned on the cloth, and Vanzant said he had never received his portion of the proceeds. White replied, he was overpaid. Vanzant retorted "he had not had a copper." Badgero told me he held the horses while Vanzant and White stitched the cloth, and told me that in passing Nicewinder, they drove into the ditch, and nearly upset the whole. The pantaloons I have on, were made from the cloth. I got it from Lorenzo White.

Cross-examined by Mr. Hagarty.—I suppose they told me this *because we belonged to one club.* Some pieces of the cloth were hid at my house. I have had no conversation with Rachael Baker about my evidence. *The rules of the club were, that we were to share and share alike, and it was understood that if any man turned, death should be his portion.* I did not swear; nor was there any oath or form.

His LORDSHIP.—Did you suppose they were allotted for on admission Mr. Hagarty?

Mr. HAGARTY.—No, my Lord.—Call Rachael Baker.

Rachael Baker deposed to being in the service of the prisoner, Vanzant, when the robbery occurred. She recollected the prisoner bringing home some rolls of cloth, about ten at night. They were of various colours. Mrs. Vanzant said that was not their cloth, and asked where he got it; but Vanzant would not say.

Other evidence was offered in corroboration; and Mr. Hagarty addressed the jury at length; who returned a verdict of "*guilty.*"

25*th May*, 1846.

Before his Lordship the CHIEF JUSTICE.

Hiram Stoutenborough, *James Stoutenborough*, and *Nathan Case*, were indicted for burglariously entering the dwelling of one John Morrow, in the township of Reach, on the night of the 7th November last; for brutally assaulting Morrow and his wife; and for robbing them of $72½.

The clerk read the indictment, to which the prisoners pleaded "not guilty."

H. J. Boulton, Esquire, Queen's Counsel, conducted the case on the side of the Crown, and Mr. Sullivan and Mr. John Duggan appeared for the defence.

H. J. Boulton, Esquire, then briefly but emphatically stated the case for the prosecution. He descanted on the enormity of the offence, remarking that it was most strange that parties who bore the respectable appearance of the prisoners, and who were connections of some of the oldest settlers in the country, could have so far forgotten their duty to themselves and their friends, and their position in society, to have been guilty of so atrocious a felony. He was sorry that they had rendered it a duty for him to prosecute, but the interests of society, and the peace and security of their fellow-countrymen, rendered it imperative that, if they were guilty, the law should be vindicated, and an example set that would deter others from following in their vicious footsteps.

John Morrow was then called and sworn. I recollect the night of 7th November last. I had been in bed about 4 or 5 hours, when my wife heard a knock at the door. She awoke me. I saw she thought that robbers were about the house. Got up and listened at the door; heard voices and footsteps outside. Immediately the door was burst off its hinges, when four men entered. One of them struck my wife a severe blow—the three men in the dock, and another, whose name I thought was Temple; but could not swear positively that it was he. Case, one of the prisoners, wore a straw hat slouched over his eyes, holding a lighted candle in his hand. The other two prisoners had no arms. The man that I thought was Temple, had a pistol and club in one hand, and a dagger in the other. He said, "It is not you we want, but your money." Told him we had no money—that I left the money ($72½) that I got for oxen I had sold, at the village of Uxbridge. He then laid the dagger against my breast, and presented a pistol at my wife. I then told my wife to give them up the money, which she did. Case held the candle while Temple counted the money, who said, "This is not enough. You have more." I said that was all I had. He then kicked me. I retreated towards the bed. They then commenced a murderous assault on me—beating me furiously about the head, leaving me all covered with blood. They struck my wife across the hand, and broke two of her fingers. They then rummaged the house and decamped. I know the prisoners for the last ten or eleven years. Have no doubt they are the men who entered the house on the night in question. One of the prisoners broke open the door, and then stood with a club; the other held the candle. Prisoner Case did not speak. Temple wanted keys; talked all the time; called Case *Peel;* thinks a person named Scott was of the party; is not quite positive; is sure there were others outside; thinks about ten or twelve.

Cross-examined by Mr. J. Duggan.—Was a man named Conklin at your house the day after the night of the robbery? Yes; and several others; gave such a statement of the occurrence then as I do now; had a conversation with Conklin in presence of my wife; did not say that I was not sure of the parties, and would swear against the Stoutenboroughs any way. Why is Conklin not here? Did not think it necessary; a man named Bolster dressed our wounds; he is a kind of *witty man*, who is very *handy that way*. [The witness seemed inclined to prevarication very much through the whole of his cross-examination.] Did you swear against Stoutenborough because you had a spite against him on account of a former robbery you suspected him of having committed upon you? No. Nor because he had chopping to do, and that you might thereby do him the greater injury by way of revenge? No; I heard some of the parties had been in Woodstock gaol for a robbery, but not for mine. Come, let us have the truth about what you said on this occasion. Witness: "You had better look out, my good fellow, where's the use of asking me

these frivolous questions? let me tell my own story." Oh! you don't seem willing to enter on the subject. I want to tell the truth about what took place, and what I swore to before the magistrates. Oh! but we want to hear a little besides what you swore to before the magistrate. I know a person named Ransom; don't know whether my wife and I were there. Was a man named Ensign at your house the following night? Yes; and stayed all the night; did not tell him we would have to swear strong, or 'twould do no good; tells the truth, and does not want any nonsense.

Cross-examined by Mr. Sullivan.—Will you tell us exactly what passed on the night of the robbery? I have told it all before. Did you tell the same story to the magistrate? Why I think so. What time did you go to bed that night? About seven o'clock; my wife sat up late. I was not long asleep when my wife waked me up stating that men were about the house. Saw the men. How? When the door opened. Hiram wore a fur cap *as natural as every day;* knows Scott a little; is not sure whether it was Temple or Scott who came to me at the bed; think it was Temple; had a notion to call to them for pity; was robbed some time previous to the last robbery; thought the prisoners were the robbers, but durst not say so; Temple or Scott beat me most; Temple said, "you felt big, but this money is ours now;" told them *our lives were short at the longest*, and begged they would let us live. Did you tell Conklin that you did not see James Stoutenborough but thought he was there? No. Did you tell him who the robbers were? Oh! I gave all that on oath next morning; did not hear my wife say that she was not sure as to the robbers; did not tell her that she would require to swear plump, or it would be of no use. Had the person who carried the club a pistol also? Yes; and a dagger; he had them in each hand. Then he had a club, a pistol, and a dagger in ea hand? Yes. Pray how many hands had he—he must, at least, according to your statement, have had three? He had the club and pistol in one hand, and the dagger in the other. How far did the Stoutenboroughs advance after the door was burst open? They did not let go the door. Then they did not go beyond arm's-length from it? No.

Mrs. Morrow, the wife of the first witness, corroborated his evidence, and gave hers in a much more distinct manner.

The daughter of the former witnesses, a child about eleven or twelve years old, was then called, who gave her evidence in a very composed and clear manner. She stated that she recollected the memorable night; that she saw the prisoners in her father's house that night; that she knew them all, as she used to meet them when going to school; and she otherwise confirmed the statements of her father and mother in every important particular. Although cross-examined by the counsel for the defence, she never varied her statements, and nothing could be elicited from her that would leave suspicion of a collusion.

James Bolster sworn, examined by Mr. Boulton.—I live a short distance from the Morrows.—Morrow called on me the day after the robbery, requesting me to accompany him to the magistrate, stating that he had been robbed the previous night, and that he and his wife had been dreadfully beaten by the prisoners and a person named Temple; went with him to lay information before Mr. Hurd; called in the evening; dressed his wounds and his wife's; his head was dreadfully bruised and lacerated; the hair was thickly matted with clotted blood. When I saw his wife, she seemed like a half-maniac—nearly deprived of sense, and falling into something like hysterics; she had received a blow above the eye, and had two fingers broken; had heard Morrow received money on the Wednesday previous to the robbery, for oxen he had sold; was of opinion that the fact was generally known.

Cross-examined by Mr. Duggan.—Heard that Morrow had lost thirty dollars in harvest last; was not aware that Morrow had a spite against the Stoutenboroughs; thought they were not on good terms, as Morrow suspected the Stoutenboroughs of having robbed him of the thirty dollars. [Here the clerk read a voluntary statement made by Hiram Stoutenborough before Messrs. Bell and Gurnett, in the District gaol, a short time after he had been committed for the robbery. It was to the effect that he kept a tavern, and that two strangers came into it on the night of the robbery, and asked where a person by the name of Morrow lived. Told him that they understood he had got some money, and they thought they might as well use it as him. He thought their names were Burr and Johnston, and was under the impression they lived somewhere about East Gwillimbury. Stated he had advised them not to go on so foolish an expedition; but that they left his house, and he suspected they were the men who robbed Mr. Morrow.]

DEFENCE.

Timothy Conklin, sworn.—Lives next lot to Morrow. A boy came to my place the morning after the robbery, and said that two men had robbed Morrow; and then proceeded to warn Stoutenborough; went over immediately to Morrow's. His door was off its hinges. Saw his wife first, who said her husband was murdered. Morrow was lying on the bed; who, after some time, asked him what he would do; said Hiram Stoutenborough and Nathan Case, had beaten and robbed him. His wife said she thought it was a person named Scott. Morrow said Case wore a straw hat pulled over his face; but did not know that James Stoutenborough was there; but thought he was in the crowd. Witness remained all that day at Morrow's; heard Morrow say that James Stoutenborough should suffer any way; thinks Morrow had a great spite towards the Stoutenboroughs; would not believe Morrow on his oath.

—— *Maher*, sworn.—This witness gave his testimony in apparently a very shuffling and evasive manner. His statements were of the same nature as those of Conklin—attempting to prove that Morrow expressed himself as not being positive as to who the burglars were.

Van Rensellaer Ensign swore to conversation of a similar kind with those of the two preceding witnesses.

Anne Graham, sworn—Was servant maid at James Stoutenborough's; recollects the night of Morrow's robbery; left Stoutenborough's about nine o'clock that night, to go to Mr. Norton's, who lived a short distance off, to see his sick child; saw the prisoner, Case, (who lived in the house with her,) before she left; returned about eleven o'clock, to get some camphor for the child; entered the room where Case slept; saw him in bed, and saw James Stoutenborough also, who spoke to her, and asked how the child was; went back to Norton's, and returned a short time afterwards, locked the door, and took the key to bed with her; got up next morning about four o'clock, and opened the door; is sure the prisoner could not have been out, as the door was locked, and the key in her possession.

Cross-examined by Mr. Boulton.—How do you come to be so positive, and to recollect so distinctly this particular night? Heard of the robbery next day, which made her recollect that night particularly. Is there more than one bed now in the house? There is a kitchen and a bed-rrom. Case slept in the bed-room, and Stoutenborough [illegible] kitchen; lived there two months sinc[illegible]. Why did you take the key with y[illegible] Because one of the children used t[illegible]e it out of the door. What age is it? [illegible] years old. Is sure Case was there w[illegible]t for the camphor.

——— *Lank*, sworn, [illegible]d by Mr. Sullivan. You recollect the night Mo[illegible]w was robbed? Yes. Where did you sleep that night? At James Stoutenborough's; went to bed at eight or nine o'clock; slept with Case and one Henderson; waked up during the night; the clothes were off the bed; heard Case complain of being cold, and spoke to him; is quite sure Case was not out of the house that night.

Cross-examined by Mr. Boulton.—Was not out of the house that night; was with Case all the night; lives in Pickering. What brought you up from Pickering that night? Came up to see my sister, Mrs. Stoutenborough; heard of the robbery being committed that night; am a farmer, and work sometimes on my father's and sometimes on other people's farms. Norton is my uncle also. Three months since he had been up there before.

Abraham Henderson, sworn.—Slept with Case on the night in question, at James Stoutenborough's; is quite positive that neither of them were out that night; could not possibly have been out without his knowledge.

Elizabeth Stoutenborough, mother of the two prisoners, gave exculpatory evidence nearly the same as that of the other witnesses for the defence.

Jacob Temple, the man alluded to by that name in the foregoing evidence, and at present a prisoner on a charge of larceny—sworn.—Slept at Hiram Stoutenborough's on the night of the 7th November last; went to bed about eight or nine o'clock; Hiram came to bed a short time afterwards, and slept with him till about four o'clock next morning; recollects his having seen two persons in Hiram's that night; does not know them; heard afterwards their names were Burr and Johnston; does not know whether t[illegible]re accused of the robbery; heard Hiram [illegible] thought they committed the robbery; hea[illegible] noise in the bar-room after going to bed; strangers and one Smith were talking about land; my father slept in the room that night also.

Mr. SULLIVAN then addressed the jury on behalf of the prisoners.—May it please your Lordship—Gentlemen of the Jury—You have listened with patience to the lengthy evidence it has been found necessary to go into, in the full investigation of this serious and novel case. A short time ago, in this country, men retired to their beds in peace, and felt themselves in a state of profound security, without any of those anxieties and fears which are common in other and older countries. We now see that the peace of this hitherto peaceful neighbourhood has been broken, and that life and property has been insecure. We have seen the vices of old communities strike root in this once moral and peaceful land. We find men in a country where the gifts of nature abound to profusion; men who have been born and brought up in the country—organise themselves into a gang of nefarious burglars and robbers, and commit depredations enough to make us shudder to think of. It has been your business at these assizes to find those men guilty, one after another. They have only to be arraigned, to be convicted. The prejudice—the horror at the depredations they had committed, had taken strong hold of the minds of everybody who heard of them. I have no fault to find with your decisions; but where a prejudice has been created, it often leaves a bias on the most impartial and the best regulated mind, which is sometimes thrown into the balance against the prisoner, when there is room for doubts as to his guilt. I recollect well that only a short time ago it would have required evidence about which there could be no doubt, to warrant a jury in convicting an accused of felony, and the evidence which has been given in this case, on the side of the prosecution, has been most inconclusive and unsatisfactory, independent of the direct and positive exculpatory evidence that has been adduced on behalf of the prisoners. If there is room for doubt at all, it is as to whether any reliance can be placed on the equivocal, prevaricatory and ludicrously improbable evidence that has been given on the side of the Crown. If you have any pre-conceived notions,—if you have the slightest tinge of prejudice on account of what has taken place at these assizes, I trust you will fling it to the winds, and weigh and adjudge of the evidence in that cool, unbiassed, dispassionate manner which your fellow men expect at your hands, when all that is dear to them—their characters—their liberties—and it may be, their lives—depend upon the verdict that you may return this day. As regards the evidence, it will be needless for me to say much on that head, as his Lordship has it all before him, and which, I have no doubt, he will fully and fairly recapitulate and explain to you; but I conceive I would not be doing justice to my clients, if I did not make a few remarks on that subject. Is it not highly improbable that men, such as the prisoners are, of a most respectable appearance—farmers and innkeepers, in comfortable circumstances—living

in a respectable and affluent section of the country, would quit their peaceful and honest avocations, and take to the atrocious trade of burglars and robbers? Is it not highly improbable—nay, is it not incredible—that if the fiends of hell so possessed them, that, with the fears of the dungeon of the penitentiary, or the rope of the hangman staring them in the face, they would have entered the house of this Mr. Morrow, aware that they were his neighbours, without disguise, with the clothes on them which they wore every day, with one of them bearing a lighted taper in his hand, for the purpose, possibly, of leaving no doubt as to who they were? It is so utterly inconsistent with probability, that it renders it morally impossible that men, endowed with a shadow of reason, could have ever had the frantic temerity to be guilty of such gross incaution. Burglars and robbers we don't find to be men of this stamp; they are proverbial for their cunning, their caution, and their ingenuity. So far, if there was not a syllable of exculpatory testimony, you must smile at the wild absurdity of such a charge. How Mr. Morrow manages to give us this testimony is a matter of some curiosity. The only reasonable way of accounting for it must be in this way: it would seem he had been robbed some time previously of a sum of money; he suspected the prisoners, with what show of reason nobody could divine, but he did. Now, it is very easy to conceive that, although it is evident he had no positive certainty as to the parties, he concluded these men, whom he suspected on a former occasion, must belong to the gang. It is rather extraordinary that, out of a party of a dozen or so, which he thinks there was, these precise, identical three men, whom he suspected of committing the former robbery, should be the men of all the crowd who entered the house, and whom alone he knew. Is it not more likely that he has reasoned with himself in this way? these men (the prisoners) must have been amongst the party, and although I am not sure, I feel almost certain that they were in the gang. This supposition is exactly borne out by the evidence of Conklin and Ensign, to whom Morrow and his wife expressed themselves as not being at all positive as to who the men were who entered the house. We have then the testimony of the other witness for the defence; and although alibis are not always in good order, yet, where we have a number of witnesses, most of them entirely disinterested, giving such full and coincident testimony, without the most trivial discrepancy in any of their statements, or in the statements of each other, although examined without hearing each other's testimony, we have every reason to believe their statements perfectly true; nay, we have reason to believe that it is utterly impossible they could be false, for there never was a witness who attempted to prove an alibi by a false testimony who could pass the searching cross-examination of an acute and learned counsel, such as my learned friend who conducts the prosecution. Here we have not one, but four or five witnesses, who have proved the entire absence of the prisoners from the scene of the robbery, and who fully and fairly accounted for their presence during the whole of that night. [Here the learned counsel recapitulated and commented upon the evidence for the defence.] Now, gentlemen, the oath of one respectable witness is as good as the oath of another respectable witness. On the part of the prosecution, you have evidence ambiguous, equivocal, uncertain—if not, to a great extent, wearing an appearace of absurdity; on the side of the defence, you have evidence distinct, clear, positive, unimpeachable. Gentlemen, it is a feature—'tis a beautiful feature—'tis a positive and clearly understood rule in the laws of your country, that when one of your fellowmen has been charged with a felonious offence against the laws of his country, however trivial—however enormous—that unless you have clear, positive, irrefragable testimony as to his guilt, you are to acquit him. It is not as in a civil action, that you can weigh and balance the testimony, and give your verdict where the evidence preponderates. If you have only a single doubt in your minds as to the guilt of the prisoners—if you can only say to yourselves, "Well, the chances are nine out of ten that the prisoners are guilty. Nay, if you could say that they were ninety-nine out of a hundred—as long as the shadow of a doubt remain in your breast, the law says, 'acquit the prisoners.'" That doubts there are, of the guilt of the prisoners at the bar, to deny could only provoke a smile at the absurdity of the remark. And now, gentlemen, it rests with you to redeem the character of these men from the ignominy—from the abyss of infamy in which this arraignment has plunged them, if they are innocent, of which I am sure you can have no doubt. If they are guilty, the direst punishment which the law can inflict, will be their desert. I shall now leave them in your hands. If you find the evidence against them, clear, positive, unambiguous, find them guilty. If you have a shade of doubt, humanity and the law says, give them its benefit, and acquit the prisoners.

The CHIEF JUSTICE then summed up the evidence in his usual clear and lucid manner, and commented upon it in that correct and happy style which is so peculiarly his own.

The Jury retired for about half an hour, and returned with a verdict of "guilty" against all the prisoners.

Trial of David Sawyer.

David Sawyer was then indicted for having on the 13th Feb'y last, burglariously entered the dwelling house of one Samson Roberts, at Whitby, and stealing therefrom a watch and other articles.

Mr. H. J. Boulton, Q. C., stated the case to the jury, mentioning that Sawyer was one of those generally known as the Markham gang. Mr. Boulton commented upon the fact that he was recognised by the wife of the prosecutor among many others; and concluded by stating that he heard there was an array of witnesses for the defence, but for what purpose, except to prove that Sawyer was in five or six places at once, he (Mr. B.) did not know. The learned counsel then called—

Mary Roberts.—I live in the 8th concession of Whitby: our house was robbed on the 13th February last at four or five, A.M.; we lost a belt, a watch worth about £5, belonging to Jane Williams, my sister, a table cloth, candlesticks, and a great many coats the property of various persons. Prisoner was in the house the morning of the robbery. I was then lying on a sofa-bed in the sitting-room. I was awoke by the ringing of the stirrup iron of a saddle. I saw a man leaving with a saddle on his shoulder; prisoner was standing at the foot of the stairs with a candle in his hand; he said he would knock my brains out if I endeavoured to alarm any one till after they were gone out. I was much terrified, and saw four persons run from the house beside him. After the family came down, we found 'twas entered by breaking the window and lifting the sash. He was dressed in a light coat. The saddle was found and brought back in the morning; 'twas the best of two. I did not see him again till I saw him in the police office. Hearing there were men taken, I went to see if I could identify him among them, and I did; I am positive it was he; I have no doubt. I was not present at the finding of the things. There was a deep snow at the time. Prisoner was the last out of the house. I did not see that he had any arms.

Cross-examined.—I never said they were armed. I believe I have conversed with Samuel Pringle and McCannah about it; but never told them the robbers had weapons. If they swear I told them so, it would be false. I know Morris Davis; he is not like him; I never said it was Davis. I have not accused any other person. I was accused and searched. I cannot tell who accused me. Suspicion fell on me on the Monday following. There was nothing found on me. When accused, I said, "I have this money;" 'twas given into my hands, but I do not recollect by whom. I keep an inn. We had company about ten that night. I was up waiting for my son. I lay down about half-past two or three. I got him some tea, and shortly after a sleigh arrived. My son said, though it was late, I was obliged to open. I then let them in; they staid an hour or so. Morris Davis and —— Latham left about half-past two. I did not look for the tracks; others did. Never mentioned my idea to Pringle or McCannah. I did cry out, but cannot tell what I said. When the clothes were brought home they were tied up in bundles. I had a few dollars in the house. There was money lost in our house by a young man from England; he left the money in a box in my sister's room; it was afterwards found sewn up in a belt, not far from the house. I did not know he had money till his loss was made known. I never saw him put it in the trunk.

Robert Greenwell—Lives near Roberts. Was awakened by the younger son of Roberts, who said the black-legs were robbing their house, and wished witness to go with him. Witness got up immediately, and took his gun and went over; found them all very much alarmed at Roberts'. Witness searched the house to see if any one was in it; found no one, except a person who was just dressing, who was known to witness as John Miles—saw him here to-day; witness asked him if he knew anything about the robbery; he made no reply to witness, and gave no satisfaction. Witness searched the bar room, and by this time it was near five o'clock. Witness went to George Ballard's, and he came with witness to Roberts', where they remained till morning. Roberts the elder and his eldest son are school-teachers, —they were away from home. A little snow fell during the night, just enough to enable witness to track persons. Searched to see if he could find tracks coming towards the house; found none, but could trace four going from the house. Saw a track on the banking under the window which had been broken, which seemed to be from a moccasin or India rubber shoe. Witness traced one of the tracks from the house for some distance, but the person left the road with a jump. Followed the track across some fields, and after crossing the fence, stamped down the snow and concealed a carpet bag with men's clothing. Witness did not observe the carpet bag, but pursued the track, which seemed to be leading to the back door of O'Boyle's house. Ballard came to witness, and they re-traced their steps, and Ballard discovered the carpet bag. They followed the track, and saw it all the way to O'Boyle's back door. Witness and Ballard went into O'Boyle's bar-room; saw no person there that they suspected; asked O'Boile if any one had come in by the back door. He said he did not know of any. There were three or four persons in the room, strangers to witness, apparently from the back country. Witness did not inquire who they were, fearing O'Boyle might take it amiss. Prisoner was not one of those in the bar-room. The carpet bag was brought to Roberts by Ballard. About a week after Mrs. Roberts had been bruised and abused by somebody, and witness was called to the house. She was in fits when witness went in; saw the person called John Mills there on that occasion. He was just getting up, dressing at the time. He was hired with some one in the neighbourhood.

Cross-examined.—Mrs. Roberts said, when witness went to the house, there was a man in the house—asked witness to search. She said he had a cleaver in one hand and a candle in the

others, and that he had threatened to kill her with the cleaver,—the cleaver was on the stairs in the morning. There was but one foot-mark on the bank at the window.

Phillip Rennis.—I went with the last witness. I considered there was only one track, although there might have been more. It was thought there was more. Following the track I saw the load had been set down twice; I therefore judged the load was heavy. Had there been two, they could have gone right on. The snow was deep. The way I was led into inquiring was curiosity. In the morning, after I got up, I saw Ballard and Greenwell in my yard—I saw that Ballard had a carpet bag; they went over to the tavern and entered. I went over; Ballard and Greenwell were there. They opened the bag with clothes in it. I stopped awhile, and then went home. I went over to Scragg and Purvis, and then we determined to go down and inquire. I went down. The Roberts's seemed very sad, the old woman and all. They showed me locks broken in the upper room. We then left and started home. On our road we observed a track into, and then out of, a field. We shortly found the bundles, with snow kicked over them. We took up the bundles and then found another track. There were coats and other articles in the bundles.

Joseph Purvis.—I went there after sun-rise; we came on up the road-ways. Where the fence was let down we saw some tracks; at a stump in the field we found the bundles. We took them to Mrs. Roberts, who identified them.

John Roberts—I am a tailor; am not related to the prosecutor, but was living in the house at the time of the robbery. I went to bed at twelve, leaving Mrs. Roberts lying on the sofa waiting for her son. When he came home he came into my room, and then went into his own. Some time afterward I heard glass broken, but then thought 'twas only something falling from the table. I did not get up but went to sleep. Towards morning Mrs. Roberts alarmed us, and said the house was robbed, and that one of the men had threatened to kill her. We then called our neighbour, Mr. Greenwell. We went to the grist-mill to see if we could track them. Miles McCannah's bundle was there with the rest. We then went westward of the grist-mill, but found nothing. *Cross-examined.*—I went to bed at twelve, but cannot tell what time this occurred. I looked everywhere in the house. She told us they were gone, but we searched to be satisfied. Counsel then called for

THE DEFENCE,

George Cliff.—I know the prisoner at the bar. At the time of the robbery I was at a party at Mr. Sawyer's,—it was a snowy night. Archibald Ross, Frary Kerr, John Silver and the prisoner were there. We left there between four and five in the morning. It was a sort of ball. I left Sawyer there. He lives three quarters of a mile from me. We went there between seven and eight in the evening, and remained there throughout the night. Sawyer was there all the time. This place is pretty near five miles from Roberts's. The prisoner has a small farm, and works it himself. *Cross-examined by Mr. Boulton.*—I have heard there are robberies out there, but never heard anything from him. Don't know Roberts's family. I can't tell the day of the week or month the ball took place. I think in February. Cannot tell how long after the robbery I heard of it. Sawyer asked me to come as a witness a month ago, and asked if I remembered being at the ball. I must have heard of the robbery within a month, but will not undertake to swear the robbery took place on the same night. The morning after Sawyer was taken was the first time I knew he was accused. I think I heard of the robbery two months ago.

Archibald Ross.—I recollect the robbery. There was a good deal of talk about the house being broken open at daylight in the morning. It was thought by some they did it themselves. I was at Sawyer's at a party on the 12th of February, and stayed there till the morning of the 13th. There was snow about sun-down and dark. I arrived there at six, and left at nine or ten next day. I looked at Silver's watch when he drew it, it was then half-past three, and he stayed half or three quarters of an hour longer. His wife and two children were with him—each carried one on leaving. I went over to Silver's in the morning about seven o'clock; when I got there he and his wife were in bed and asleep. The room was light, and I saw only two foot-tracks. His house is about forty rods from his father's. *Cross-examined.*—I know it was the 12th, because the day before I worked for Preston Stotts, and charged him in Orr's memorandum book—I looked at it last Friday. Stotts and I spoke of the robbery next day. I always charge him, but cannot say how many times, "'tis quite a quantity." I did not work there on the 13th, 14th, or 15th, but I did on the 18th, 19th and 20th. I worked for him since the ball. I did'nt "particular" put down the day the ball took place. I am a farmer—that is a labourer. I have a wife; we live on Joseph Burritt's farm. I was first asked to be a witness on the first of June, the first notice I had was from Mr. Duggan; the first account of the robbery from Frary Kerr. We are on friendly terms. We don't go about in the

night. When I went over, we talked about the boys that was taken and the ball. We *settled* that it was on the 12th. They asked me, and I said the robbery was the day after the ball. *By a Juror.* My attention was not turned to this matter till since the arrest; the circumstances occurring together impressed it on my memory. I heard of the robbery from Frary Kerr, (we think) he is *one of that school.*

John Silver.—I reside in Whitby: my father is distantly connected with the prisoner. I recollect the robbery because of the ball; I left it at five minutes to four. I heard of the robbery in the morning, when I got home; this was an hour before daylight: I did not go to bed. A man named Bradley told me of the robbery at breakfast table; he told us the news generally. We breakfasted about seven; there was "considerable talk." I live about five miles from Roberts, in the 1st concession of Reach. I had to get some writings the next day; I got a note of hand, and walked home; I parted with the note on the 10th or 11th of May: if I had no such note I should have recollected it, as I heard it when I got home. I have known Sawyer ten years,—he is considered an honest man, and never was supposed to be guilty of such an offence. *Cross-examined.*—I know I am correct as to the time I left,—I showed my watch at half-past three; I left David Sawyer, his wife, Cliff, and others there; only two or three were gone; Ross staid,—he said he did n't go away till he got his breakfast. I took breakfast at Bradleys,—'twas about daylight we had it: I don't know where he went. He got up about six—his brother and I were together; 'tis two miles and a-half from Sawyers' to Bradley's; he was only out a short time when he returned, and said a man had told him this. I cannot say how long I stayed at Bradley's: he told it, and then it became "talk;" he did not say who mentioned it to him. There are many travellers on the road—people drawing logs, and others.

Frary Kerr.—I was at a party the night of the robbery—*the supposed night:* I stopped all night. The prisoner went away about four o'clock—the wife and he each carrying one child. We made arrangements just one week before; the ball was on a Thursday; I think I heard of the robbery next day; there was a light fall of snow; Sawyer was there the whole time, 'till four or five. *Cross-examined.*—I had no watch; it was I who invited the party; I live at prisoner's father's, and have done so for four or five years; Sawyer is my brother-in-law; I work the farm on shares with prisoner's father; I am sure the ball was on the 12th; I heard of the robbery next day. Silver went away a little before the prisoner; Ross stayed all night; I was not up when he went away; I looked at Silver's watch *at two o'clock—not after.* I know Bradley's,—'tis two miles and a-half from us. I think I spoke to parties to attend as witnesses,—I think, among others, to Ross. Prisoner has borne a good name, so far as I have any knowledge. I think I spoke to Ross, on Thursday evening, but not as to his evidence.

Miles McCannah.—I was at Roberts' when the robbery was committed. Mrs. Roberts told me she was up till three, and that Norris and another were there till a late hour,—that she saw men walking on the platform that night. I asked her if she had any idea who robbed her, and she said a tall man in a white coat left her room, another was there, with a candle, and that his face was blackened. She accused Terry and the two Warners, people she knew—she suspected them. *Cross-examined.*—I recollect Greenwell and Ballard coming into my room—I was awake; they did not speak,—I should have heard them if they had; Greenwell looked under the bed. I asked Mrs. Roberts what it meant? She said she "had been robbed;" I don't think it was day-light. I lodged there five days; I only stayed one day after: we parted good friends.

Christopher Hodgson.—I have known Sawyer for four years; we have been near neighbours three years. I heard about the robbery, but could not recollect the date till I bethought me of Sawyer's party. I was called away to Toronto on the 12th, and transacted business at the Bank of British North America. Don't know there was a ball, further than having an invitation to it.

Abner Hurd.—I am a magistrate, living six miles from these parties. I cannot say I know the prisoner; I have heard some for and some against him, but cannot say that I know anything personally. Until this robbery, I had never heard anything against Mrs. Roberts.

Mr. Duggan addressed the Jury at considerable length, on the prosecution of Sawyer and others,—as well as on the evidence offered for the defence.

His Lordship charged the Jury at some length, who shortly returned, with a verdict of "Guilty." The prisoner was not sentenced.

Toronto, Wednesday, June 24th.

Trial of Henry Johnson.

Henry Johnson, charged with breaking into the house of Thomas N. Scripture, in the township of Whitby, and stealing therefrom a pair of trowsers, value £1, was placed at the bar.

Thomas N. Scripture.—I was robbed on the 20th of August last, about two in the morning

I heard some one enter, and called out, but got no answer. I heard the door unlocked,—'twas done after one of the lights at the side were broken; they got in, unlocked the door, and hoisted the sash,—this led into the hall. the party then went through the room adjoining, that we call "the square room," to my bed-room door. I had left my pantaloons hanging on the chair in the other room. On hearing the noise, I got out of bed, and then heard some one run towards the hall. I followed, and in passing through the hall, found my pantaloons missing. I did not see the party. There was a pocket-knife, some keys,—and the key to the money-drawer in them; that that locks the bar sash had the hoop off,—I had substituted wire bound with tape. There was change in the drawer; early in the evening, Mr. Draper came to change small bills for large,—I gave him seven or eight $10 bills; I had other monies, but paid this publicly. I put the notes I took from him into my pocket-book, and the book into my pantaloons pocket. I judged whoever stole them knew I had the money, and thought I was watched through the windows, on going to bed; I hung the pantaloons on a chair, in the adjoining room. I heard them come close to my door,—the step was quick and light; I called all up. I live at Windsor; 'tis seven miles from Nelson Graham's,—that is towards Reach. I don't know the prisoner; am not aware that I ever saw him till this assize. *Cross-examined by Mr. Blake.*—I attended to the fastening of the window, and am satisfied it was done that night. I saw no trace of any person, nor could I hear any one; I did not set the dogs on, that I recollect. I cannot tell what money there was in the pockets; I never left much; I feel confident there was some.

Daniel Spencer.—I know the prisoner, and recollect the robbery; the first I heard of it was the evening that Johnson and Jim Allen had gone. I live about fifty rods from Graham's. They passed down east to go to the plank road; I did not recognize them. The next morning I went to Graham's, and they were there telling him what they had done. There was Graham, Stoutenborough, Johnson, Allen and myself. There were some dogs pretty wild, they said, "like enough they were on their track;" they mentioned they had got Scripture's breeches. Johnson pulled out a key; he said he thonght 'twas a desk key; he pulled out a bunch also, and buried them in the chips in the barn. They said there was some small change. *Cross-examined by Mr. Blake.*—They said they had been deterred from proceeding further by hearing some one getting up and shout "Siboy!" when they run. Johnson had a string of keys, but I cannot tell whether he spoke of more than one. Cannot say whether the key called Scripture's key was buried. They said, jokingly, "we shall spoil this man." Some one said he was fooliah, he replied that he always buried things where people walked. I cannot say why I went over. This went on in the stable, and as though I was not there. The dogs were barking and they listened, and then went on telling how they got on. 'Twas the second time I had seen Johnson, although I saw him frequently afterward. I never hesitated about identifying. It was shortly after I got home they passed; my wife drew my attention to them. This was in August; why I recollect it is, that Graham came over for them to breakfast at my house, as he did not wish Bunce to see them. I heard Scripture's deposition. They said they had to hurry when Scripture called out.

Ellen Graham was then called by Mr. Boulton. Mr. Blake objected that her deposition had been taken after the committal of the prisoner, and behind his back, and quoting Queen Caroline's case, urged that her evidence should not be received. This was overruled by his Lordship. She then deposed, that she heard of Scripture's robbery the next morning, and continued:—I was at Graham's when Johnson, Stoutenborough and Allen came.—They went out with Graham towards the stable. I had never seen them before. I went home again. About sunset I saw these young men pass, afterwards Stoutenborough and Graham came over to our house. They staid a little while. The next morning I saw my husband talking to them over at Graham's stable a little after sunrise. *Cross-examined.*—After the robbery I recollect distinctly their coming. I had not seen Johnson till the day I named. He told my husband of the robbery. I have been tried for larceny.

William Bunce.—I have lived at Whitby with Graham and with Spencer. I went to Spencer's on the 27th day of August, and heard of the robbery some time afterward. I saw the prisoner with Allen at Graham's a few days before I left. Graham said his name was Henry Reed. I saw him at Graham's frequently after I moved. I did not know Stoutenborough, but there was one there whose name I did not know. *Cross-examined.*—I worked Spencer's farm till the other day on shares. He worked steadily. We parted in March by mutual consent. We got the writings on the 29th of September. All the profit I got was from saw-logs. During the time I was there we did nothing but logging—the season was unsuitable. Spencer was arrested before I left. I knew nothing about the robberies. There were three stolen blanket

found in Graham's house, but I was ignorant of the affair. Mr. Blake addressed the Jury at considerable length, principally directing their attention to the mode of taking the depositions, and the character of the witnesses.

They retired, and at the time of leaving the Court no verdict had been returned.

Robert Burr was then placed at the bar, but from the number he challenged (seventeen,) a Jury could not be obtained. The Court then adjourned.

Toronto, Thursday, June 25th.

The Burglary and Outrage in Reach.—Trial of R. Burr.

Before Mr. JUSTICE MCLEAN.

This morning, the jury sworn to try Henry Johnson, not having been able to agree, were discharged by his lordship, on the opening of the court.

Robert Burr was charged with breaking into the dwelling-house of one John Morrow, and beating him with the intent to kill, &c.

Mr. Boulton explained the case to the jury, and was proceeding to state how the prisoner was identified, when he was stopped by Mr. Duggan, who objected to the learned counsel stating anything about the mode of recognition, or as to Burr having been in prison elsewhere.

Mary Morrow.—Our house was robbed on the morning of the 8th of November ; it stands alone nearly in the centre of a 200-acre lot, and half-a-mile from the road. My husband had sold the cattle on Thursday, for which I received seventy-two dollars and a half ; the robbery was committed on Friday. I had sold other property, and had received two dollars and a half for sheep, in silver. We had other money by us. We had four four-dollar bills, two two-dollar bills, and one one-dollar bill ; the rest were fives ; with it was some silver ; this we had sewed up in a pillow under our heads. Our clock did not go ; therefore, I cannot be certain, but I think we went to bed about eleven. I heard the dogs bark, and the feet of men. At first, I thought they were neighbours. I woke my husband and told him to get up as I feared there were robbers ; the dogs seemed to keep them back. At the moment I spoke, the door was burst open, and four men entered ; the two Stoutenboroughs first. One man rushed to the bed in two strides from the door, and struck me. One (a stranger) then struck my husband, giving him several blows. He then said, "Morrow, it is not your life I want, 'tis your money. You have got seventy two dollars and a half for cattle ; give them to me, or I'll take your sweet life." He then struck me on the head, saying the neighbours told him I kept the money. Nathan Caisse was then searching the desk. I told him we had lent the money to a friend, but he replied we had not been there since we received it. He then put a pistol to my ear, and one to my husband's breast, demanding the money, or he would "take our sweet lives." My husband told me to "get the money, and quick and save our lives." I then got it and gave it to him ; there was a roll of notes ; the purse he cut in two, and one-half fell on the floor. He put the silver in his pocket, and kept the roll in his hand. The Stoutenboroughs went outside.—They brought a candle with them. I know all of them except the prisoner. He I had never seen before. He was the man that beat my husband. I am sure he is the man. I said it was not Temple, but a man like him. [Mr. Duggan objected that this evidence was not admissible; that, on Stouenborough's trial, she knew nothing of Burr ; and urged that she should be confined to what she heard, and said, and did.] I went to the gaol with Mr. Gurnett. He ordered Burr to be brought up. A man was brought up, but he was not the party. He then ordered Johnson to be fetched, and this man came. I immediately said, "that is the man." I had not seen him since the robbery. Mr. Gurnett then told me his name was Robert Burr. Prisoner did not speak when he heard me say he was the man. When he got the money, he counted and shook the bills, and said, "that would do, but it would not save our lives," and demanded $300, adding, "The neighbours say you have it." He then beat my husband and me, and swore he would take our lives. He said, "Morrow, you said you were robbed, and so you was, *but you shall never be able to tell of this.*" My husband was left apparently dead—insensible. Burr reached round me to beat him. I put a quilt and then a pillow to protect him, when Burr raised the club to strike him on the back of his head. They had been gone for some time, when my husband came to. We had a child in bed with us. It cried out, "Pappy and mammy all bloody." He then raised the club, and tried to strike the child. I put up my hand to protect the child, and received the blow. It broke my little finger. He then ordered us out of bed. My husband got across the room by leaning on the chairs. We were both bleeding profusely ; he cursed me for looking at him ; he then stepped back and presented a pistol, and finally struck my husband with the club, when he fell partially into the cupboard. He was about to strike him again, when I raised a chair over our heads to protect us. He then struck me three times, demanding why I looked at him. When my husband got up, he knocked him down again apparently lifeless. There was one slight

movement of the hand and foot—that was all. I raised his head, but he seemed dead. Burr then said, "Bring on your other men, and I'll serve them the same." I told him I was helpless. He then knocked me down, and told me to go to h—l with my Scotch brogue. He then looked at my husband and said, "He'll tell no more tales, and for you, go to h—l with your long prayers." He then went to the door, returned and said he would knock his d—d brains out on the floor. He then struck at the head, but struck the floor. I begged of him to let the lifeless corpse alone. He then knocked me down again. When I got up, he struck me across the mouth, and knocked my teeth out. He then bragged, "This you got (the money) by your industry, but where is it now?" I followed him out, and told him that I knew him. He then threw the club at me, and knocked me down. The club was left there. There were were ten or eleven in all; they went away three different roads. When he demanded the $300, I said they were promissory notes. He said I might go to h—l with them; he would *pay us a visit when they became due. Cross-examined.*—My husband said, the parties were the Stoutenboroughs, Caisse, and Scott or Temple. I stated, on the last trial, that if my life was spared, I should recognize the man. I had no conversation with Atwick about it. I swore he had glassy dark or brown eyes, blue beard, thin lips, and yellow complexion. I don't know what my daughter said; she is here; I have seen Temple since.

Margaret Morrow, (daughter of the last witness.)—I am eleven and past; we live in Whitby; we lived in Reach till April. I remember them coming to our house in November, the evening of the 7th, or morning of the 8th; I should think 'twas after twelve. The first thing I saw was Nathan Caisse, who came into my room, at the west end of the house; there is a door to divide it from the kitchen, but it is not hung. I knew Caisse, from his constantly coming to grind his axe on our grindstone; I had known him three or four years. He threw every thing out of the chest, and then went to a desk in the kitchen, just at the bed-room door; he came back, and turned everything over again, and then left the room, telling us to lie still. Prisoner said he would take our father and mother's lives; he was the man that beat them; he struck my father, first demanding "$72, and the price of the sheep he had sold to his neighbours;" after that, he struck my mother, while sitting up in bed.—While father was laying, he struck him on the back of the head. I went up stairs, at last, and as I left, I saw my father falling against the cupboard. I and my brother went up, leaving a younger brother in bed. I went to the gaol with Mr. Gurnett and my mother. The gaoler brought up Johnson under the name of Burr. Mother and I said 'twas not the man.—When the next man (the prisoner) was brought up my mind was made up as soon as I could see him. *Cross-examined.*—I remember being here before, and what I said. I have had conversations with people about it. I did'nt hear them break in. I went up stairs because I was frightened. I sat up in the bed but can't tell how long. The party standing at the outside door was Hiram Stoutenborough. He called out when Burr struck, "Morrow takes it now." My parents were struck three times before I went up. I did not take particular notice of what mother said before; but, I believe, it was that she thought "it was a person like Temple." Father thought it was him. Burr was striking father while Caisse was in my room. When he left the room he stood at the foot of father's bed.

[The clear manner in which the evidence of this little child was given, exhibited a degree of intelligence and shrewdness of observation, rarely to be met with. It did not, however, save her from a cross-examination—so harsh as to set her weeping—an examination better suited to such witnesses as Spence and Stotts.]

John Morrow, the father, was then called, but his evidence presented no new feature.

Sarah Abrahams.—I did live servant with Hiram Stoutenborough; the house is half a mile from Morrow's. I recollect hearing of the robbery at his house. Two strangers came there the night before the robbery, and stayed there the next day and night; I got supper for them that evening. Hiram told me to have the breakfast ready early in the morning for these parties—prisoner was one. I don't know their names. I have never seen him since till lately in town. I saw Johnson the other day in the City Hall. I have learned their names since I have been in town. I got up about six o'clock, but Jacob Temple came in and said I need not hurry, as the strangers were gone. I have no doubt as to his identity. They had horses. I heard no name while they were there. I got the supper, but I cannot say whether they slept in the house. I don't know that they went to bed. *Cross-examined.*—I saw one take the horses out in the morning, I thought to water. They slept there the first night; I waited on them at supper. Their bed-room was off the bar, but I cannot tell whether they went to bed.

Rachael Stoutenborough.—The prisoner came to our house on Thursday evening, the night before that on which the robbery took place. They remained there till Friday night;

they were there during the day time for two or three hours. While I was giving change a stranger in the bar said to prisoner, "Hallo! why how did you get out this far?" I have seen Johnson, and am positive he and prisoner are the men. I got supper for one of them in the fall. I cannot say what time they left; the last time I saw them was about ten. I was up at two to give my child some drink, and there was nobody in their bed.

Jacob Temple.—I lived at Stoutenborough's at the time, and lived there a month. I remember two strangers coming on the Thursday night. The prisoner at the bar is one, the other is called Henry Johnson. I don't know what they were doing. I was not at work. They left about four on Saturday morning. I heard them open the door and come in before. They shook Stoutenborough, who was in bed, and told him they wanted "to pay their bill and be going." They went to bed about ten, but they must have gone out. One stood by the fire while Johnson roused Stoutenborough.

Mr. Duggan (counsel for the prisoner,) then called for

THE DEFENCE.

Nathaniel Burr.—I happened to be at Post's hotel, and hearing some one call Burr by name I spoke to him, telling him I was the uncle of the prisoner, and asked him if he would object to answer me a few questions; he said "No!" He told me that the party who beat him had on a grey coat; that he took particular notice: that it was what would be called a blueish grey. He added that it was "boughten," not home-made cloth; and that the party was a little taller than I, and heavier; of a dark complexion, a smooth face and black sparkling eye. This was on the 26th day of May. I am an inch and a half taller than the prisoner. I expressed a wish to speak to Mrs. Morrow. He took me up Queen-street to a grocery store, and went down some steps into a sort of kitchen—Mrs. Morrow was there. On my descending she looked me full in the face; I sat down beside her—he in front. She had her eyes continually on me, and at last said, "that is not a Burr, or if it is, the man that robbed me was not a Burr." I asked her about the height. She said he was taller than you, with dark hair and very dark sparkling eyes. I was here at Stoutenborough's trial. Morrow said the man that beat them was either Temple or Scott, but could not say which. I asked Mrs. Morrow as to the dress. She said that his coat was grey, with black velvet collar and trimmings, pantaloons chequered, an old straw hat and new boots. Morrow said he should'nt swear—that he *could* not swear to the parties, for "directly they came in (he said,) they struck me and I fell on my face,—the blow was repeated, and I then could only see a glimmering light of a candle." *Cross-examined.*—Morrow came to me at Post's. I did'nt hear Stoutenborough charged; I expect he is a married man. I don't know that Burr has any home. He was in Markham last fall; he was on his father's farm,—his father lives somewhere round there. He lived at a house on his father's place,—I believe 'twas his father's house, and that he occupied it. I heard Morrow making a statement, but cannot repeat it, or say whether my statement is consistent with what I have previously said.

Thomas Blanchard.—I live at Markham—I was living there in November, and was talking to the prisoner's brother on the Friday,—he was then repairing a mill-dam, and asked me to assist. The next morning, Saturday, I saw him about ten o'clock—I saw him at his own door. I was informed of a robbery. My wife told me she had seen Burr. Mr. Burr mentioned it to me, and asked me if I had seen him. I thought it strange. *Cross-examined.* I have lived in Markham a year and a half. I was at the time attending mill for Mr. Ayres. I heard of the robbery the week after it occurred, but I cannot recollect the date. Robert Burr was buying a pig from his father, and I was writing that day. The first time I was spoken to was this week. Burr was accused, I think, about the 12th or 13th. I could'nt say positively I saw him on the Friday. I did not tell his father—it runs in my mind it is McCannah. I cannot swear that I saw him any day that week. Burr left that part of the country soon after.

Reuben Burr (brother of the prisoner.)—I heard of this robbery about the time it occurred. Nathaniel Burr lives five miles from me. I am thirty-five miles from Morrow's. I have been within three miles of the house. I heard of the robbery ten days after. I saw him on Thursday, and again on Friday, between sundown and dark. He brought my horse home, he had borrowed. I next saw him on the Sunday. I was in Toronto on Saturday. *Cross-examined.*—I heard from several persons that he was suspected. I told Nathaniel sometimes in the winter, and my father after Christmas. My uncle is farming his own land. I told my father right out. My brother was not likely to bring the report from Reach himself. I am positive he was at home on the 7th. I was in Reach about a week or ten days before the robbery. He [the prisoner] left our part of the country on the 18th of November. He went away on foot alone; he was talking of leaving all the fall. I believe his wife and family are at Port Huron, Michigan.

Mary Ann Burr.—I am the wife of the last witness. I heard of the robbery at Morrow's

the beginning of the week after it took place—that was on the 7th of November, on a Friday. We lived in a rented house. I saw Robert Burr on the 2nd, 3rd, and 4th. I saw him on the Friday morning. He came to borrow a horse for the day to draw wood. *Cross-examined.*—I recollect the dates, because my business leads me to think of it; 'twas a particular week with me. I heard of the robbery on the Thursday following. I first heard Robert was suspected, in the winter. I did not hear anything from my own family. We did not often see our Uncle; we were too low in circumstances for him to visit us. After I heard it was charged upon him, my mind reverted to all the circumstances.

Thomas Farr, James Walker, and *Jacob Rush,* gave evidence, but of an unimportant character.

The learned counsel [Mr. John Duggan] addressed the jury at considerable length, taking occasion to denounce the mode in which these prosecutions are conducted, the seeming prejudices of the juries, and the suavity of the judge.

The jury, after retiring for a time, returned with a verdict of "Guilty." The prisoner was sentenced to be executed on the 10th day of August next.

Trial of John Fleming.

John Fleming, charged with breaking into the granary of Caspar Wilson, in the township of Pickering, and stealing therefrom certain quantities of wheat and oats, was arraigned.

Caspar Wilson.—I live in the centre of the township of Pickering. I found that I had lost sixty bushels wheat and fifty bushels oats; they were kept in the granary, which, with the barn, was locked. The barn stands on a stone wall on the west end; the granary on the east. I discovered that plank was removed, placed there to keep the pigs and geese out. About eleven, I went into the barn and missed the scoop shovel. There was a place for the door between the barn and the granary, but none hung. The east end opened upon a piece of spring wheat. A lad was with me but I said nothing to him. I could trace nothing except about a quarter of a mile distant. The barn stands twenty rods from the concession line—my house is about twenty rods from the road. The foot marks were plain through the piece of wheat—there were three bag-strings left in the granary by the parties who removed it. I have no reason to suspect the prisoner; all that I know is that I was robbed. *Cross-examined.*—I have no reason to suspect the porties living close by. I did suspect Stotts. I asked his man, but he said he was not away. Stotts and the Whites were all talked of. When the story came out I said nothing; Stotts worked for me three or four weeks before. The little door leading out of the granary was then as usual. There were some green oats on the railing of the concession that convinced me they had gone over. On Monday night Stotts was at home.

Samuel Cochrane, (a member of the Society of Friends.)—Hubbard borrowed some bags of me two or three days before the robbery—he persuaded me that the oats he was to have from Spencer were not ready. He borrowed twelve bushels of me, promising to return them on an early day. In the first part of July my team was passing his door, he called to the driver and requested him to take the quantity home. He sent me the oats and the bags.

Caspar Stotts.—I know of this robbery. Lorenzo White and Hubbard came to me on the Monday night, and said that they and Fleming were going to get some oats. I refused to go, because I had a hired man, who I thought might tell. White was living at my house, and wished me to go. Hubbard took the waggon, and White followed. *Cross-examined.*—They were thieves and I have been so. I have told lies, but not to you or in this court. I am not a liar or a thief.

Daniel Spencer.—Prisoner told me in gaol that he had got some of Wilson's oats and wheat. I knew him before he was brought to gaol. He was dismissed by the magistrates after examination. He said that if "Stotts swore he was present he would swear to a lie, as he was in the waggon in the road all the time." I had no chance of seeing him afterwards. He said 'twas Hubbard White and himself. *Cross-examined.* — Fleming never was an associate of mine. I have seen him at horse races, but never recollect being with him. He told me 'was at Caspar Wilson's. We were walking up and down; they all flocked round me to get the news. I told him I thought things were against him, and "he then ups and tells me." I had not then been in gaol. I have not conversed with any party about turning Queen's evidence. Elmore Crandell came up and asked me what he should do. I told him I did not know, but if the evidence against him were strong he had better plead guilty.—He said he thought he should do so. He told me he thought he could implicate some. I told him if he did turn Queen's evidence to swear against no man unless it were the truth. I married his sister. I did not tell him 'twas no matter who he charged. He bears a bad name like me.—The gang swear for one another—they generally do it.

Caspar Stotts (recalled.)—I have known him eight or nine years. I was not a thief then.

Mr. Duggan—in defence, sought to impress on the Jury, that in this, as in many others of the trials, there was no evidence to sustain the accusation, but that of Spencer and Stotts. He then called, as to character,

Mr. Panton.—I know the family, and have always thought them respectable ; I lived five miles from him, and have met him for the last three years ; I don't know whether he has left his friends.

Samuel Cochrane (recalled.)—Fleming was with Hubbard ; it was publicly known Hubbard had been in the Penitentiary. Hubbard kept a shoe-shop,—not an inn or boarding-house ; he returned from the penitentiary four years ago, and people deal with him as usual ; I know nothing criminal against him. Fleming has been at work middling ; he was not a loafer ; he was a man of good character "*full middling.*"

The Jury were absent but a short time,—returning with a verdict of "Not Guilty."

Trial of Henry Johnson.

Henry Johnson was indicted for having on the 5th September last, entered the house of one John Rogers, in the township of Markham, and stealing therefrom a watch, rifle and other articles.

Mr. Blake, for the Prisoner, objected to the reception of the evidence of Spencer, and others, in this case, pending their Lordship's decision on the points raised by him, and which had been argued fully before their Lordships in the past week.

John Rogers.—I live in East Gwillimbury. My house was robbed on the 5th September ; 'tis on the 4*th* concession, lot number 15,—the house is away from anything else. Just close on twelve, at noon, I went across the road to the next lot, to water my horse. On my return, I saw two men upon the road ; they were advancing towards me,—they were about six rods distant ; I expected they would say something, but they did not ; I noticed they were coloured of a yellow colour. After passing me about twelve rods, they looked back. I went to get a saddle, to go down to the other farm ; I had not more than got it, when I was told the house was torn in pieces, and the things taken; there was a woman in the house. I immediately came back, and found every thing turned upside down ; the boxes and chests were broken open,—but all I missed was the rifle, watch, and a half-dollar that I did not mention before. I thought at the time that I knew one of them ; I thought 'twas Harvey Graham ; the man I took to be him was taller than the prisoner; of the two that I saw—the highest had a dark coat, with light hat,—the other a light coat, torn in the sleeve, and a blue cap. I first heard of the charge against the prisoner when I received the subpœna. I complained against Wilson and Harvey Graham. They used to live close by there. They were acquitted. They were not dressed like the Grahams. The gun was made in Toronto—it was a cut rifle—the stock was of curled maple. Joseph Beaver was about the house that day. I never named this to Stotts in my life 'till I saw him here 3 weeks ago. I never conversed with him or Spencer till I saw them here.—When in the Police Office I was surprised to hear the particulars. I learned there was a quarrel about the guns as one stood outside while the other was in. I had saved £400 to buy a farm, and having to pay for it on a certain day, they thought I had it in possession; this is the way it leaked out. I had had £200 or upwards then.

Joseph Beaver,—I did not see them when they first came. My wife was alarmed and jumped out of the window. I then went up and looked through the pane of glass. The little fellow said, "d——n you, if you don't clear I'll blow your brains out." I then went away. I cannot say that prisoner is one on account of the disguise.

William Bunce,—I lived with Daniel Spencer from the 27th August. [Here the witness recapitulated the evidence he gave on Wednesday.] He was charged with the same offence. I knew that Johnson and Allen were at Graham's in August, and frequently afterwards. Johnson was tallest. Allen usually wore blue cloth. Johnson a grey coat and double breasted black coat. Allen got a fresh dark suit before leaving. Nelson Graham lives on the 7th concession of Whitby. I do not know where they were going to when they left. *Cross-examined.*—I never was taken up for robbery, I never told the constables—[Here the Crown prosecutor interposed, and he and Mr. Blake had a sort of sham fight, each calling on the Bench to justify their course ; subsequently they sat down and smiled benignantly on each other, 'till Mr. Boulton called,]

Caspar Stotts, who said,—Allen and Johnson called on me on the afternoon with the rifle and left it. They said they were going to Graham's. A week afterward they came back and said, 'twas John Rogers's gun who lives away at the north-west. They said they got it about 12, A. M., and that they understood there was £200 in the house, but they did'n find it, and only took the rifle. The watch they did not mention to me. They said when the women halloed they escaped. Allen charged Johnson with having got more than the half-dollar, but he would give no more, an

stated he would never go with him again. I gave information before Rogers had said anything. The Graham's were tried but got off. *Cross-examined.*—I cannot tell when I first knew Bunce. I was not acquainted with Allen and Johnson long before the robbery. I think that was the first time. He came and told me some of the particulars. He mentioned he got these at Rogers's. I know Spencer. I don't know what coat he wore. He sometimes wore a dark coat. I cannot tell the month this occurred, but 'twas after harvest. I gave bail to appear to take my trial. I was one of the first arrested. I have not yet been tried. I have been living on my farm since the adjournment. I do not consider myself a curse to the country, but I do to myself. Although I have turned Queen's evidence, I may be brought up for judgment at any moment. I have been connected with several robberies.

Mr. Blake then rose and addressed the jury; principally calling their attention to the nature of the evidence—that it was that of accomplices. The learned gentleman argued that none would be so able to give a detailed account as the principal, or an accomplice; and then for a short time descanted on political judges and evils they inflict on the country. Commenting on the conduct of the prosecution, he said, "from all I see, that (the prosecution) pays far better than the defence;" and continued, "the judgments of some judges are not worth a fillip; but he, whose decision I quote, labored long and had great experience. I am not quoting for you the opinion of a political judge (pointing with his left hand to the Crown prosecutor), placed on the bench for his political opinions — pitchforked there without professional claims; but those of eminent men." The learned counsel then drew the attention of the jury to parts of the evidence, urging that, according to the decisions recorded in the English books, it could not properly be received.

His lordship then summed up, commenting upon the evidence; and told them that without disbelieving Spencer, it was a kind of evidence to be looked upon suspiciously.

The jury retired and shortly returned with a verdict of "Not Guilty."

Trial of Elmore Crandell.

Elmore Crandell was then placed at the bar, charged with stealing a black coat, waistcoat, pantaloons, a watch, a gun, a fur cap and other articles, the property of Thomas Stark.

Thomas Stark.—My house was broken open last October; it is on lot 5, of the 8th concession of Whitby; this was done between eight and nine. I went to Hatherwood's "raising." On my return, I saw the door had been forced; I saw some of my clothes on the floor. The gun produced is mine; I paid £5 13s. sterling for it in Scotland; the first time I saw it after the robbery, was at the Police Office; I expect it was discovered through certain information. We followed the track of two men, but could not find them. I charged no one at the time. I, with some of my neighbours searched several houses, but we could find nothing. I had no conversation with Spencer, till I came up to this city.

Van Ransallaer Warner (Mr. Duggan objected to him, as an accomplice, but the objection was over-ruled.)—Prisoner sold me the gun, a little better than two years ago; I gave him a cutter for it; there was nobody present; there was a balance receivable by me. I know Daniel Spencer,—I don't know the prosecutor, nor do I know his house; I have been in gaol three weeks. The accouut I have given to-day is the same I have always given. I never was examined as a witness on this.

Jacob Diah Gates.—I know Stark; I saw him have a gun like this. To the best of my knowledge and belief, I saw it in Warner's house. (In reply to Counsel.)—I have no doubt—

Mr. Duggan objected, that the learned counsel had no right to ask him "whether he has doubts?"

His Lordship.—That is a new doctrine to me, Mr. Duggan: go on, Mr. Boulton.

Warner (in continuation.)—He wished me to trade with him for it, but I said I would rather have a single-barrel shot-gun. *Cross-examined.*—I think the Crown has another charge against me, about a saddle, but I know of no other.

Ransaeller McCarthy.—I took the gun in exchauge for the cutter. When I asked where it was got, I was answered from Elmore Crandell. I got it a year ago last March; I had no knowledge of its being stolen; I told them where I got the gun, and parties came down and bailed me.

John Watkins.—I went and searched the last witness' h for the gun; I saw it on the top of the cupboard; I had a search-warrant; he told me at once how he came by it, and I was satisfied, by his manner, that he knew nothing of the robbery.

Daniel Spencer.—I know this gun belonged to Stark, and I know how it left his possession: Crandell and I went, after seven. We broke the house open and got it,—also a coat and vest, and other articles, and $11½ in money,—this was in the fall of 1843. When this information was given, there was no charge against me for this robbery. *Cross-examined.*—I did

not know all about Udell's affair, nor did I plan it with Udell.

Mr. Duggan urged that there was no case to go to the Jury,—that there was no evidence but Warren's to connect Crandell with it, and being an accomplice, it is laid down that his evidence cannot be received, while another indictment is hanging over his head.

The Judge.—Is Gates' evidence nothing ?

Mr. Duggan. — Nothing to commit the prisoner.

Mr. Boulton.—This man is not an accomplice, till shown to be so.

Mr. Duggan.—You admitted it in addressing the jury.

Mr. Boulton.—That shows how you will talk. I did not address the jury at all. I lost three cases after addressing juries. I therefore thought I would try what the other course would do.

Mr. Duggan argued that the receiver is an accomplice ; and also, that, although the judges will allow an accomplice to give evidence, yet that they will not do so where there is more than one charge against him ; further, that application should have been made to the court for the reception of evidence not tendered to the grand jury. The court over-ruled the objections.

The Learned Judge then summed up ; and the jury, after retiring, brought in a verdict of "Guilty." The prisoner was sentenced to five years' hard labour in the Provincial Penitentiary.

Monday, June 29th.

Trial of George Crandell.

Before Mr. Justice McLean.

George Crandell was placed at the bar, charged with burglariously entering the dwelling house of Thomas Moffatt, in the township of Reach, and stealing therefrom one gun, his property.

Mr. Boulton stated the case to the jury, and called—

Thomas Moffatt.—I lost a gun between the 19th and 22nd May, 1844. I was away from home. I was at work at prisoner's father's. He knew I was there. I worked there throughout the day. He was at home in the morning, and then away till sun down. I went down to my father's that night. I wanted a plough, and he not having finished with it, I waited for it. My wife went home on the Saturday. I got the plough that day, and ploughed for prisoner's father. The things were all right on Saturday at noon. After my day's work, I went down to her father's for her, but rain came on and we could not return home all night. That was the night the gun was stolen. I saw him twice on Saturday. He knew my wife was from home. [Mr. Duggan objected to the question put by the learned counsel—"Did he know your wife was there ?] He lives at his father's. He was there that day. A neighbour of mine came and told me the dog was shot, and lying weltering in his blood. I went home, and there found the dog dead, lying on the step ; the door half open. The blood was cold. The gun was gone. I saw the prisoner coming from his father's. He was going east ; I west, and in the direction of my house, but outherly. He did not say where he was going. I said to him, "You have done the job at last, and stole the gun." He levelled the gun he had with him at me, and said, "If you say that again, I'll put a ball through you." I suspected him at once, because he had wanted the gun previously.

Mr. Duggan urged that one suspicion could not be given in evidence to support another, and begged his lordship to note his objection.

Moffatt, in continuation.—He asked me to let him have it. I said it was too good. He said, when with John Hooker, "I understand you have a cross dog ; if 'tis killed, you'll know who to lay it to." It is a single-barrelled gun, of London manufacture. I don't know how long it is. The case I had for it is 4 ft. 2 in. It was silver mounted and guarded. The door jam was cut away, and the nail that fastened the latch thrust back, but the windows were not disturbed. I complained to his father. He said, "Robert, if the gun is not brought back, it shall be brought where you can get it."

Cross-examined by Mr. Duggan.—I met him about an hour after the robbery. I can't say he was coming from any house, nor can I be positive which house he was coming from. I think 'twas between 7 and 9. My wife had been home. John Hewlett told me the dog was killed. I cannot say the time. It might be an hour before. It was because he said, "You have a cross dog &c." that I suspected him. There was nothing said about my wife being away in Crandell's presence. He was not working with me. He passed through the field once to get hard wood to cut wedges out of. He went home after cutting the wood. The rain came on after dark. I did not say he "cocked" the gun. I know Spencer. I never saw him at my house. I don't know that he knew where I lived. I cannot tell where he slept that night more than where you slept last night. No person told me to look after Spencer. I have no knowledge of a conversation with Abner Brown about him.

Catharine Moffatt.—We lived in Brown's shanty when the gun was lost. It was a sho

gun. I cannot describe the marks. I was coming from my father's, when I met my husband going down to Scugog Lake for potatoes. I went with him, but did not return with him. He went round Byington's corner; I, a nearer cut, across the fields. I overtook Abner Brown and walked with him. I saw a man standing on the wood pile opposite our door. I said to Brown, "he does not seem much afraid of our dog." He was looking round, but I think he did not see us. He went from the wood pile towards the door. He had been in the house. He then got on the wood pile and looked round again. He then caught sight of us and retreated round the end of the stoop, the opposite side to us. The dog had been vexed—so much so that he would not let us go in. I then told Brown to go a little back. There were large pieces of wood that had been thrown at the dog. He then allowed me to go in, and *he went to the place where the gun always hung, and then to the gun itself*, which had been taken down and set against the window. It was placed where it could be taken out. The man I saw was the prisoner. I had been absent 2 or 3 hours. He saw me going away. The gun was in its place when I left, on two spikes on the back wall. The hole in the wall in which there is no sash is large enough to admit the man. The door was shut when I left, and the dog watching. The window is on the west side, the door on the south. My husband had stretched canvas across this window place, with some beech sticks to keep it from flying in. The dog was a large dog. The cloth was removed as well as the sticks, and lying on a chest immediately under the window. He walked away fast and took to the wood. It was not far. That was not the natural way to leave. *Cross-examined.*—I told my husband when he came home. This attempt occurred about two years ago, and about 3 weeks before a gun was taken. I knew old Crandell; he lived about a mile away. I did not go to him. I mentioned my suspicion. There is a small clearing in front of the shanty. When he got on the wood, he was watching to see if any one was coming. We were far off from him. I told the neighbours 'twas Crandell, and Brown went after him into the bush, but, losing the track, returned.

David Spencer.—I heard that Moffatt lost his gun, the day it was done. After supper, Crandell told me he had the gun. I married Crandell's sister. He asked me to go down to the field with him and he would show me the gun. I did not take it in hand or examine it. I did not take much notice of it. Chryssler is connected with the Crandell's, by marriage. He married tke prisoner's aunt. I don't know where he lives. *Cross-examined.*—I told the magistrates I thought there were some brass nails on it, but I am not sure. I do not recollect any conversation with Lucy Anne Brown. I never said 'twas I and Benjamin Crandell who took the gun. He was in the penitentiary when the gun was stolen. I don't expect to get off without punishment. I cannot say what led me to the Crandell's on that occasion. I had been to the house when Brown lived there, but not after. It was daylight when Crandell told me. I did not tell any one till I told Mr. Gurnett. I advised him to plead guilty.

Mr. Duggan, addressing his Lordship, said the only evidence against the prisoner was Mrs. Moffatt, and on the occasion to which she deposed there was no severance of possession such as the law required.

His Lordship thought differently, and summed up to the jury, who brought in a verdict of "Guilty."

The prisoner was sentenced to five years hard labour in the Provincial Penitentiary.

Wednesday, July 1st.

The Sentences.

Present—The Chief Justice, Mr. Justice McLean—W. Proudfoot and George Monro, Esquires.

James Stoutenborough, *Hiram Stoutenborough*, and *Nathan Case*, convicted of burglary at the house of John Morrow, were placed at the bar.

The *Chief Justice*, addressing them said,—That at the time of their conviction objection was taken by their counsel that the offence was not sufficiently stated, and that the verdict was general. His Lordship explained to them that the first objection was raised on the omission of Morrow's name in one clause of the first count, and added, that it had had the attentive consideration of the Judges, who were of opinion it was not a fatal objection. And now—said his Lordship—I would say a few words to you. You have been found guilty, after a patient inquiry by a very intelligent jury. With respect to Nathan Case's connections nothing came out, but as to you, Stoutenboroughs, it is well known that you belong to a respectable class—the farmers—one without any of the temptations to which some positions are liable. Although no circumstances can excuse such crimes, yet there are in some cases redeeming features that induce us to look more favourably on them; but yours presents no such palliating circumstance. The law leaves us the discretion of recording the sentence of death, leaving its disposition with the government—who, I hope, may see fit to mitigate it. The Court

will, therefore, under the humane provisions of the statute, record the sentence of death.

John Smith, on being asked if there was any reason why sentence should not now be passed on him for larceny, said, "I am not guilty, my Lord, of the charge preferred against me by Spencer."

His Lordship.—It happened in your case, Smith, that the jury unfortunately had not all the evidence of that unquestionable character we could desire. You were ably defended by counsel, who objected to the admissibility of some portion of the evidence. I was careful to tell the jury that the evidence was admissible, but that it was for them to decide how far they felt credence could be given to it. There being nothing else against you, to the knowledge of the court, I think it better to refrain from inflicting such a punishment as almost forbids the possibility of a man regaining his character. The sentence of the court on you, John Smith, is, that you be imprisoned for twelve months to hard labour, in the common gaol of the Home District.

Jacob Temple, on being called on to give any reason why judgment should be stayed, said, "I have nothing to say, my Lord, only that I should like to have the punishment as light as I could."

The court sentenced him to eight months hard labour in the common gaol.

Robert Burr, convicted of burglary, and assaulting John Morrow with intent to kill, on being called up said, "I am not guilty of any such charge."

Justice McLean.—The court has already recorded sentence of death against three other parties who were associated with you in this offence. Not but they were equally guilty with you in the eye of the law, but it is not proved that they used the violence, but the evidence brings this home to you conclusively. You beat this poor man, Morrow, until he was left apparently dead. One witness says you said "Morrow would tell no more lies." In addition to this, you said "they had been robbed and had told of it, but they never should be able to tell of this." By the evidence, you left him weltering in his blood, and without the sign of life. The jury have found you guilty on the second count for the burglary, and on the third for the entering and attempt to murder. The law allows us, where there are any mitigating circumstances, to record the sentence of death, as in the Stoutenboroughs' case, but in your case, with the evidence so clear, I do not feel I should be exercising a sound discretion to alter the course of law. It will now be with the executive government—but I do not feel at liberty to interpose. The sentence of the court on you, Robert Burr, is, that you be taken back to gaol, and that on the 10th day of August next you be taken to the place of execution, and there hanged by the neck till you are dead. I cannot hold out any hope of its mitigation. All that can be done is by the intercession of your friends; but it is my duty to tell you that I cannot second such application, should it be made. The prisoner, who appeared unmoved during the passing of the sentence, was then taken down.

George Crandell, convicted of stealing a gun, the property of Thomas Moffatt, was then brought up. He denied his guilt.

The judge briefly alluded to the evidence, and sentenced him to five years hard labour in the Provincial Penitentiary.

Elmore Crandell, his brother, for a like offence, received a similar sentence. Mr. Duggan objected in each case, that the evidence upon which they were convicted, was the evidence of accomplices, and he contended, inadmissible—requesting his Lordship to note it.

David Sawyer, convicted of burglary, was then brought up; but Mr. Boulton stated that some circumstonces had come to his knowledge that induced him to doubt the prisoner's guilt, and that, in consequence, he should not call on the court for judgment at present.

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